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No. 83-2095

In the Supreme Court of the United States

OCTOBER TERM, 1984

LANDMARK BEEF PROCESSORS, INC., ET AL., PETITIONERS

v.

JOHN R. BLOCK, SECRETARY OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioners contend that the court of appeals should have issued a writ of prohibition to terminate administrative proceedings by the Department of Agriculture adjudicating whether petitioners' alleged failure to pay full price for meat purchases constituted a "deceptive practice" under 7 U.S.C. 192(a). Petitioners assert that the administrative proceedings violate both Article III of the Constitution and their right to a jury trial under either the Seventh Amendment or the Sixth Amendment.

1. Petitioner Landmark Beef Processors processes beef and prepares it for sale, and petitioner Treibatch is chief financial officer and a principal owner of Landmark (Pet. App. 2, 4). On July 26, 1983, the Secretary of Agriculture filed an administrative complaint against petitioners alleging that they had engaged in "unfair or * * * deceptive practice[s]" within the meaning of Section 202(a) of the

Packers and Stockyards Act of 1921, 7 U.S.C. 192(a). The Secretary alleged that petitioners, on 53 separate occasions, had "purchased meat and meat food products and failed to pay, when due, the full purchase price for such meat and meat food products" (Pet. App. 5).

Prior to the commencement of an administrative hearing on the charges under 7 C.F.R. 1.141, petitioners filed for a writ of prohibition under 28 U.S.C. 1651 in the United States Court of Appeals for the Ninth Circuit. Petitioners did not challenge the jurisdiction of the Secretary of Agriculture to adjudicate the "deceptive practices" alleged in the complaint. Rather, they alleged that proceeding with the administrative action would violate several of their constitutional rights, contentions that petitioners renew in this Court. Specifically, petitioners argued that the administrative hearing, through the subsequent operation of collateral estoppel, would deprive them of an Article III forum in which to adjudicate facts that allegedly would comprise the basis for future common law contract actions (see Pet. 6-13). Similarly, they asserted that the administrative hearing would deprive them of a jury trial in the contract action that might follow the administrative proceeding, in violation of the Seventh Amendment (see Pet. 13-16). Finally, they argued that the fines that could be levied in the instant administrative proceeding were so high as to be punitive, rendering the proceeding a criminal one that did not have the protections of the Sixth Amendment (see Pet. 17-19). The court of appeals denied the petition for a writ of prohibition without comment (Pet. App. 1).

2. At the outset, we note that petitioners do not purport to advance any reason why this Court should consider their constitutional claims now in the context of an extraordinary writ of prohibition. Cf. *Will* v. *United States*, 389 U.S. 90, 95-96 (1967) (mandamus). These contentions can be

heard by the courts in the ordinary course after the administrative proceedings are exhausted, without prejudice to petitioners. See 7 U.S.C. 194. Indeed, the outcome of the administrative proceedings may render petitioners' claims moot (see *Rosenthal & Co.* v. *Bagley*, 581 F.2d 1258, 1261 (7th Cir. 1978)); even if the claims remain alive, the administrative record may enhance this Court's ability to consider the merits of the constitutional claims (see *Aircraft & Diesel Equipment Corp.* v. *Hirsch*, 331 U.S. 752, 764-774 (1947)).

More important, the issues petitioners seek to litigate (with the exception of their makeweight Sixth Amendment claim) are not presented by this case at all. Relying on *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982), petitioners contend that 7 U.S.C. 193 is unconstitutional because it authorizes the Secretary to proceed with a hearing on the administrative charges that would not be before a judge invested with the salary and tenure protections of Article III. But petitioners do not suggest that the administrative hearing would itself adjudicate purely private rights. Rather, they apparently contend only that the administrative adjudication is likely to have collateral estoppel effect in a future common law action if the meat vendors bring suit for breach of contract. Even if petitioners were correct that Article III would prohibit the application of collateral estoppel in such circumstances, there is no reason to invalidate the administrative proceedings here. Petitioners should simply challenge the application of collateral estoppel in the common law action -- if the question ever arises.[1] Thus, it is clear that petitioners' complaints about the collateral estoppel effect of the

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[1]Indeed, if petitioners were correct that constitutional problems with potential applications of collateral estoppel required suspension of administrative proceedings, countless other statutes authorizing such proceedings would also be invalidated since many have the potential to affect a subsequent common law action. For example, enforcement

deceptive practices charges — both on Article III and Seventh Amendment grounds — are, at best, premature.[2] In any event, the claims are without merit.

3. Petitioners' Article III contention represents an extraordinary extension of the holding of *Northern Pipeline*. It has long been established that administrative proceedings can have collateral estoppel effect in subsequent judicial actions. See *United States* v. *Utah Construction & Mining Co.*, 384 U.S. 394 (1966). Thus, petitioners contend that *Northern Pipeline*, without addressing the issue at all, requires either invalidating numerous statutes authorizing administrative proceedings that may affect a subsequent common law action, or, alternatively, overruling the well established rule of *Utah Construction*.

There is no need for this extreme interpretation, however, because *Northern Pipeline* can easily be reconciled with *Utah Construction* and the principle of collateral estoppel. Assuming arguendo that petitioners are correct that *Northern Pipeline* precludes administrative agencies from adjudi-

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proceedings brought by the Occupational Safety and Health Administration and the Securities and Exchange Commission often precede or parallel private lawsuits growing out of the same set of facts.

[2] *Public Utilities Commission* v. *United States*, 355 U.S. 534 (1958) (see Pet. 5 n.5), is inapposite. There, the question was whether the United States was subject to the authority of the agency at all, and therefore there was no possibility that the controversy would not remain alive at the close of the administrative proceeding. The Court expressly stated that if "an administrative proceeding might leave no remnant of the constitutional question, the administrative remedy plainly should be pursued [before a judicial challenge can be raised]." *Id.* at 539-540. This case plainly falls into that category, for petitioners' claims will evaporate if no deceptive practices are found, and, moreover, the crux of their claims turns on a speculative future application of collateral estoppel.

cating private contract rights,[3] it does not follow that administrative agencies, in the course of adjudicating public rights, must also be precluded from finding facts that may have an impact upon or be dispositive of private contract rights in other litigation. Indeed, the plurality opinion in *Northern Pipeline* itself recognized that there is no requirement that all facts in a common law action must be adjudicated by an Article III judicial officer. 458 U.S. at 76-84. Article III courts in contract actions have long given controlling weight to factual determinations of arbitrators (see, *e.g.*, 9 U.S.C. 9; *York & C.R.R.* v. *Myers*, 59 U.S. (18 How.) 246, 253 (1855)), and special masters (see, *e.g.*, *Heckers* v. *Fowler*, 69 U.S. (2 Wall.) 123 (1865); *Kimberly* v. *Arms*, 129 U.S. 512 (1889)), as a matter of course. And this Court has specifically held that an administrative agency may make factual findings in a case that is ultimately decided by an Article III court, noting that "there is no requirement that * * * all determinations of fact in constitutional courts shall be made by judges." *Crowell* v. *Benson*, 285 U.S. 22, 51 (1932). Affording a prior decision collateral estoppel effect, just like deferring to prior arbitration awards or determinations by special masters, in no way trenches upon the judicial power of the United States. The "essential attributes of judicial power" (*Northern Pipeline*, 458 U.S. at 81) remain vested in the Article III courts.

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[3]At a minimum, it is an overstatement to say that the Constitution requires that traditional common law proceedings be adjudicated in their entirety before Article III judicial officers. See, *e.g.*, *Goldstein* v. *Kelleher*, 728 F.2d 32 (1st Cir. 1984), petition for cert. pending, No. 84-5 (common law tort action may be tried before magistrates upon consent of the parties).

Moreover, operation of collateral estoppel does not undermine the independence of the judiciary that Article III seeks to preserve. The doctrine of collateral estoppel itself emanates from the judicial branch, embodying notions of finality, due process, and conservation of judicial resources. See generally *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322 (1979). Unlike the bankruptcy court structure held constitutionally infirm in *Northern Pipeline*, collateral estoppel cannot be viewed as an incursion by a sister branch onto the independence of the judiciary. The doctrine of collateral estoppel involves no untoward delegation of judicial power to non-Article III judicial officers and does not augment legislative or executive power vis-a-vis the judiciary. Therefore, *Utah Construction* is consistent in all respects with *Northern Pipeline*. Petitioners' Article III argument simply misconceives the nature of the *Northern Pipeline* decision.

4. Petitioners' contention that the Seventh Amendment prohibits administrative factfinding that might ultimately be given collateral estoppel effect in a private lawsuit is similarly without merit. Petitioners clearly cannot claim a right to a jury trial for the administrative proceeding here. As this Court held in *Atlas Roofing Co.* v. *Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 450 (1977):

> At least in cases in which "public rights" are being litigated — *e.g.*, cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact —the Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible.

The Secretary's suit alleging deceptive practices under the Packers and Stockyards Act clearly seeks to vindicate a "public right." The fact that private rights may also be

indirectly implicated in no way transforms the character of the proceeding into a common law contract action. See *Crowell* v. *Benson, supra.*

The potential collateral estoppel effect of the administrative proceeding does not suggest a different result. The Seventh Amendment has never been thought to preclude operation of collateral estoppel and res judicata. Indeed, in *Parklane Hosiery Co.* v. *Shore, supra*, this Court flatly rejected a Seventh Amendment challenge similar to that raised by petitioners where facts determined in an action in equity brought by the SEC were later given collateral estoppel effect in a jury trial. The Court explained that the "law of collateral estoppel, like the law in other procedural areas defining the scope of the jury's function, has evolved since 1791. * * * Thus if, as we have held, the law of collateral estoppel forecloses the petitioners from relitigating the factual issues determined against them in the SEC action, nothing in the Seventh Amendment dictates a different result, even though because of lack of mutuality there would have been no collateral estoppel in 1791." 439 U.S. at 337. See also *Wickham Contracting Co.* v. *Board of Education*, 715 F.2d 21 (2d Cir. 1983); *Consolidated Express, Inc.* v. *New York Shipping Ass'n*, 602 F.2d 494, 503 (3d Cir. 1979). Cf. *Katchen* v. *Landy*, 382 U.S. 323, 336-340 (1966) (determinations of fact in cases tried in equity have long been held to bar relitigation of those same facts in cases before juries).[4]

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[4]Petitioners' Sixth Amendment argument is wholly insubstantial. Apparently, they argue that the potential size of the fines they face (based on 53 separate violations) makes the Packers and Stockyards Act a penal statute under *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144 (1963). But the concept of civil fines is well established. See *United States* v. *Ward*, 448 U.S. 242, 248-251 (1980). Indeed, petitioners themselves acknowledge that "not all of the *Mendoza-Martinez* factors support their Sixth Amendment claim" (Pet. 19). There is simply nothing in the Act that suggests that it is penal or that the civil proceeding alleging deceptive practices should be treated as criminal.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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